

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RAMIRO BOTELLO and RAMON GARCIA,)	
on behalf of themselves and all others similarly)	
situated, known and unknown,)	
)	
Plaintiffs,)	Case No. 13 C 4568
)	
v.)	Magistrate Judge Schenkier
)	
CREATIVE FOODS, LLC, d/b/a SCAPA)	
ITALIAN KITCHEN, and ANTHONY J. SWIGON))	
individually,)	
)	
Defendants.)	

**PLAINTIFFS' MOTION TO REINSTATE CASE, ENFORCE SETTLEMENT
AGREEMENT AND FOR ENTRY OF A JUDGMENT ORDER**

Plaintiffs Ramiro Botello and Ramon Garcia, through their counsel, move this Court to reopen this lawsuit for the purposes of enforcing the Settlement Agreement in this case and for an order requiring that the balance of any unpaid settlement proceeds be accelerated in full and reduced to a judgment. In support of this motion, Plaintiffs state as follows:

1. Plaintiff's claims arose under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* ("FLSA"), and the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.* ("IMWL"), for Defendants' failure to pay overtime wages to Plaintiffs and other similarly situated persons.

2. On February 18, 2014, Plaintiffs and Defendants (the "Parties") participated in a settlement conference with the Court and a settlement was reached. A copy of the fully executed settlement agreement is attached hereto as Exhibit 1. With respect to payment of the settlement proceeds, Section 1.A of the agreement provides that:

In consideration for the promises in this Agreement, Employer shall pay Employees the total

sum of Thirty Thousand Dollars (\$30,000.00) as set forth in the schedule attached hereto as Exhibit A. The payments shall be apportioned and paid as follows:

- (i) Beginning on March 15, 2014, and on the fifteenth day of each subsequent month thereafter until April 15, 2015, Employer shall make payments to Employees and Werman Salas P.C. in accordance with the schedule set forth in Exhibit A, attached hereto.

See Exhibit 1.

3. The Settlement Agreement provided payment of the settlement money in fourteen installments. Defendants' seventh monthly installment was due on September 15, 2014 in the gross amount of \$2,000.00. See Exhibit A to the Settlement Agreement, attached hereto as Exhibit 1. That payment has not been made.

4. On September 24, 2014 Plaintiffs sent a notice of default to Joseph V. Vito in accordance with the provisions of Section 9 of the Settlement Agreement. See Exhibit 2, Correspondence dated September 24, 2014. As of the date of this motion, Defendants have failed to cure the default.

5. Section 9 of the Settlement Agreement provides that in the event of a default, Employees may sue for the balance of the Settlement Payment, with the balance of any unpaid settlement proceeds being accelerated in full and reduced to a judgment in favor of Employees and against Employer. See Exhibit 1.

6. As a result of Defendants' default, Plaintiffs are entitled to an acceleration of the unpaid balance of the settlement payment in the amount of \$15,000.00, and an entry of judgment against Defendants, jointly and severally.

7. Plaintiffs respectfully request that the Court enter an Order enforcing the terms of the parties' Settlement Agreement, accelerating the unpaid balance of the settlement payments, and

entering a judgment in favor of Plaintiffs, and against all Defendants, jointly and severally, in the amount of \$15,000.

WHEREFORE, Plaintiffs request that the Court enter the proposed Order, which has been simultaneously submitted to the proposed orders email box, (i) granting Plaintiffs' Motion, (ii) directing Defendants to pay Plaintiffs the unpaid balance of the settlement proceeds owed to them, now accelerated, under the settlement agreement's terms, (iii) and entering a judgment in favor of Plaintiffs, and against all Defendants, jointly and severally, in the amount of \$15,000.

Respectfully submitted,

Dated: October 14, 2014

s/Douglas M. Werman
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